

TOWN OF ITHACA

LOCAL LAW NO. 4 OF THE YEAR 2010

**A LOCAL LAW AMENDING CHAPTER 230 OF THE TOWN OF ITHACA CODE,
TITLED STREETS AND SIDEWALKS, TO REVISE PROVISIONS RELATED TO
EXCAVATION AND CONSTRUCTION IN MUNICIPAL ROADWAYS AND
HIGHWAY RIGHTS-OF-WAY**

Be it enacted by the Town Board of the Town of Ithaca as follows:

SECTION 1: Chapter 230 (Streets and Sidewalks), Article 1 (Excavations in Town Streets and Highways) of the Town of Ithaca Code is amended by deleting Article 1, Sections 230-1 through 230-4, and inserting a new Article 1 reading as follows:

**ARTICLE I
EXCAVATION AND CONSTRUCTION IN MUNICIPAL ROADWAYS
AND HIGHWAY RIGHTS-OF-WAY**

§ 230-1. APPLICATION; FINDINGS.

The provisions of this article apply only within the Town of Ithaca, Tompkins County, New York. The Town of Ithaca hereby finds and declares that the provision of safe travel and the maintenance of safe public highways and roadways are of paramount importance to the public. Further, highways are costly to build, repair and maintain, and the Town of Ithaca expends substantial resources annually to maintain, repair, preserve and protect such public highways. Thus, based thereupon, and upon the authority granted to the Town of Ithaca under and pursuant to Town Law § 64, Highway Law § 136, Articles 39, 40 and 41 of the Vehicle and Traffic Law, and §§ 10(1)(a)(6) and 10(1)(a)(12) of the Municipal Home Rule Law, the Town of Ithaca adopts this article to preserve and protect highways and related rights-of-way, and to ensure safe travel for all persons travelling there upon.

§ 230-2. DEFINITIONS.

The following terms used in this article shall have the following meanings:

A. APPURTENANT STRUCTURE - "Appurtenant Structure" means any temporary or permanent structure or construct, other than a roadway or road surface, within the area of any Highway, including those structures, constructs, and devices located or installed over, upon, or under any such Highway, including, but not limited to, signs, traffic control devices, waterlines, utility lines, communications lines, culverts, ditches, drainage ways, manholes, fire

hydrants, curbs, driveways, guardrails, bridges, bridge supports and railings, fencing, and often also including driveways.

B. DEFAULT - "Default" shall mean (1) any violation of the terms, requirements, or conditions of this article; or (2) the violation of any terms or conditions of any Permit; or (3) performing any work, Construction, or Excavation not referenced in any application; or (4) performing any work, Construction, or Excavation upon any land, Highway, or Appurtenant Structure not specifically identified in the Application or the Permit issued by the Town of Ithaca.

C. CONSTRUCTION - "Construction" means the building, installation, repair, or replacement of any Appurtenant Structure.

D. CONTRACTOR - "Contractor" shall mean any person or entity, including any landowner or private citizen, that proposes to perform Excavation or Construction under, in or upon any Highway, or any Appurtenant Structure related to any Highway.

E. EXCAVATION - "Excavation" shall mean any work, process, or construction that proposes to or does alter the surface of any Highway, or which affects the soils or any Appurtenant Structure of or under any Highway, including, but not limited to, pavement cuts and culvert installations, and also including road surface work and paving.

F. FEE - "Fee" shall mean any charge or cost imposed or due under or as a result of this article. Fees may be set, updated, changed, or amended from time-to-time by resolution of the Town Board of the Town of Ithaca.

G. HIGHWAY - "Highway" shall mean each, every, and all public streets, public sidewalks, public roads, public alleys, and public highways within the Town of Ithaca that are Town of Ithaca highways by use, highways by dedication, and/or highways by implication, including the paved or finished surfaces thereof, all signage, all ditches, culverts, drains and drainage ways, all utility and similar structures and appurtenances, and all land, improved or otherwise, within the bounds of the highway rights-of-way.

H. HIGHWAY SUPERINTENDENT - "Highway Superintendent" shall mean the elected or appointed Highway Superintendent of the Town of Ithaca, and/or the Town of Ithaca Director of Public Works, as applicable, together with the designees of each such person who are given specific written authorization to act for such Highway Superintendent or Director of Public Works under this article. By resolution, the Town Board may designate any person or entity to act in the

name, place, and/or stead of the Highway Superintendent in relation to any or all matters, duties, powers, and/or responsibilities of the Highway Superintendent as are referenced in or necessarily implied by the terms and clauses of each and all of the Sections of this article. Further, by and in the same or another resolution, the Town Board may revoke or limit the power of appointment of the Highway Superintendent or the Director of Public Works to name designees under this article, and may further appoint such designees itself, or grant such appointment power to any person or entity designated to so act in the name, place, and/or stead of the Highway Superintendent.

I. PERMIT – “Permit” shall mean any permit required under or pursuant to this article.

J. SECURITY – “Security” shall mean: (1) a cash deposit delivered to the sole custody of the Town of Ithaca to secure and guarantee performance under any Permit and compliance with this article, free of reservations, restrictions, conditions or claims; or (2) an unconditional letter of credit approved by the Town of Ithaca; or (3) a performance, completion, and indemnity bond approved by the Town of Ithaca; or (4) a Certificate of Deposit irrevocably assigned to the Town of Ithaca in an approved amount; or (5) any other form of undertaking as approved by the Town of Ithaca; or (6) any combination of the foregoing approved by the Town of Ithaca.

§ 230-3. PROHIBITIONS.

No firm, utility company or provider, transportation corporation, communications or cable company, or other person or entity shall conduct any Construction or make any Excavation, cut, or breaking in, or otherwise open any Highway or sidewalk for any purpose whatsoever, including, but not limited to, the making of any driveway connection or the installation or repair or replacement of any culvert or other Appurtenant Structure, without a Permit issued pursuant to the requirements of this article. No Contractor may perform any Construction or Excavation in, upon, or under any Highway, nor construct, repair, install, or build any Appurtenant Structure, without a Permit. No Contractor or other person or entity in connection with construction or excavation may spread, place, or distribute any substance upon a Highway or within a highway right-of-way unless done pursuant to, and in compliance with, a Permit.

A. In the case of an emergency any person or entity already having or possessing rights to any Appurtenant Structure within any Highway may effect such emergency repairs as are reasonably necessary; but such person or entity must thereafter apply for a Permit upon the next business day.

B. This article shall not apply to the installation of mailboxes and newspaper boxes.

§ 230-4. PERMIT REQUIRED.

A. Contractors must obtain all appropriate and/or required Permits and approvals from the United States, the State of New York, and the County of Tompkins, or from their applicable subdivisions, prior to applying for a Permit from the Town of Ithaca. All Contractors are required to obtain a Permit from the Town of Ithaca prior to performing any Construction or Excavation in, upon, or under any Highway, or before constructing, repairing, installing, or building any Appurtenant Structure. Each Permit issued by the Town of Ithaca will be valid only for a stated period of time. Permits are not transferrable or assignable by any act or by operation of law. If the Permit expires, a renewal Permit may be issued by the Town for an additional fee, as set from time to time by Town Board resolution, and upon such additional terms, Security, or restrictions as determined by the Town Highway Superintendent.

B. When a common Construction or Excavation project involves more than one firm or Contractor, including public service companies and transportation corporations, those Contractors shall together designate in writing a lead Contractor who shall be responsible for obtaining a Permit, acting in compliance there with, and for compliance with the terms and requirements of this article. Despite the existence of a lead Contractor, all such other persons and entities shall be and be deemed Contractors under and pursuant to this article.

§ 230-5. PERMIT PROCESS.

Contractors must submit a completed application for a Town of Ithaca Permit upon a form provided and approved by the Highway Superintendent. The Highway Superintendent may develop and utilize one or more types of forms for Permit applications as based upon any reasonable standard, such as, but not limited to, the type of work to be performed (e.g., "culvert permits" or "driveway or curb cut permits" or "excavation permits", etc.). All Permit applications must be completed in its entirety and must contain the following information or materials:

A. Project drawings and specifications for any Excavation or Construction as required by the Highway Superintendent, including, where applicable surveys and/or plans sealed by a New York State licensed engineer or surveyor in compliance with, *inter alia*, the New York State Education Law.

B. An application Fee. The Contractor must submit, at the time the application is submitted, an application Fee as set from time to time by Town Board resolution, or the application will be rejected as incomplete.

C. If the Contractor proposes to do work or perform any Excavation or Construction upon or under any land outside of the Highway, the written consent of the owners of each such parcel of land shall be provided, and such written consent must recite that such owner has reviewed the proposed Excavation or Construction drawings and specifications and consents to, or otherwise permits, such work.

D. An executed instrument, in a form satisfactory to the Town, that the Contractor assumes sole responsibility for the worksite and related or adjacent areas and lands, agrees to assume all responsibility for any loss, injury or damage that may or does occur as a result of any Excavation or Appurtenant Structure Work, agrees all work shall be performed in accordance with the conditions of the Permit and all applicable laws, rules and regulations, and further agrees to defend, indemnify and hold the Town harmless from any loss, injury or damage arising out of the granting of the Permit or as a result of the project, Excavation or Appurtenant Structure Work

E. Whenever required, a completed Environmental Assessment Form ("EAF") shall be submitted by the Contractor pursuant to the provisions of the State Environmental Quality Review Act and its implementing regulations at 6 NYCRR Part 617, and Chapter 148 of the Town of Ithaca Code, Environmental Quality Review (together herein, "SEQRA"). No Permit may be issued until the SEQRA review process has been completed.

F. A Stormwater analysis of the impacts of any excavation or construction or installation project upon the Highway and its Appurtenances. Such analysis shall follow the requirements of any applicable Stormwater Local Law or Ordinance (including Chapter 228 of the Town of Ithaca Code, Stormwater Management and Erosion and Sediment Control), and shall comply with the terms of (i) the New York Standards and Specifications for Erosion and Sediment Control manual, commonly known as the "Blue Book", and, as applicable, (ii) the State Pollutant Discharge Elimination System ("SPDES") General Permit for Stormwater Discharges from Construction Activities GP 0-10-001 (as it now exists or as hereafter codified, updated, changed or amended). Any information and any Stormwater Pollution Prevention Plan ("SWPPP") or any Simple Erosion and Sedimentation Control Plan shall be designed to contain any increases in stormwater and prevent any erosion of the Highway and any Appurtenances, as well as prevent stormwater pollution and sedimentation.

G. The required amount(s) and type(s) of Security.

H. Construction and Excavation start dates and completion dates.

- I. Satisfactory proof that the work shall be done by a person competent to perform the same
- J. Any other information the Highway Superintendent may require, including, but not limited to, traffic control plans.

§ 230-6. WINTER WORK.

During the "winter work season," which is hereby defined as November 15 through April 1, annually, Permits will generally be issued only at the discretion of the Highway Superintendent and generally only for emergency work. In the event that a winter Permit is issued, the following temporary remediation and other requirements apply:

- A. All Highway shoulders shall require additional materials and compaction as determined by the Highway Superintendent.
- B. Temporary pavement and road surface restorations may be made by (i) the placement and compaction of a minimum of two layers of dust-bound crushed stone, each of a compacted thickness of four inches on the prepared sub grade, followed by a layer of bituminous concrete, winter mix, six inches in compacted thickness, on top, or (ii) as otherwise required by the Highway Superintendent.
- C. No frozen material shall be placed in excavation areas.
- D. Daily inspections shall be required and paid for by the Contractor. Whenever required by the Highway Superintendent, the Contractor shall perform any needed repairs or maintenance within 24 hours of receipt of any notice requiring the same
- E. All Temporary repairs shall be maintained by the Contractor until a permanent repair is made. The Contractor must monitor the site and perform repairs upon at least 24 hours advance notice by the Highway Superintendent.
- F. As early as spring weather permits, the excavation area shall be inspected at the expense of the Contractor and a permanent repair shall be made by the Contractor. Where required, in the reasonable discretion of the Highway Superintendent, the permanent repair may require re-construction of the road base or other re-construction requirements.
- G. Notwithstanding anything which may appear to the contrary in the Permit or this article, the Contractor assumes all responsibility for the safe maintenance of the subject work site(s) from November 15 through April 1, and

further assumes all liability for damages resulting from, or in any way connected with, the subject work and work area during this period.

§ 230-7. REVIEW OF APPLICATION; FEES, ESCROW DEPOSITS, SECURITY AND INSURANCE.

A. The Highway Superintendent shall review each completed and submitted application within 30 days. Any application may be rejected if:

- (1) The details, specifications, or drawings are incomplete or lack specificity.
- (2) The proposed project, work, Excavation, or Construction is or will be harmful or injurious to any Highway as determined by the Highway Superintendent.
- (3) The application has incomplete or inadequate stormwater controls, if required, or an inadequate SWPPP or Simple Erosion and Sedimentation Control Plan.
- (4) The proposed Contractor is unable to meet the Security requirements of the project and/or this article.

B. The Highway Superintendent shall, for each application, determine and set an amount of Security and liability insurance that must be posted and/or provided by the Contractor prior to the issuance of any Permit. The Security shall be in such form and amount as determined by the Highway Superintendent. The insurance shall be procured, paid for, and provided by the Contractor, who shall maintain general all-risk liability, completed operations, and workers' compensation insurance coverages, each in the minimum amount of \$1,000,000.00. Each such coverage or policy shall name the Town of Ithaca as an additional insured and waive any subrogation rights as against the Town of Ithaca. For any Construction or Excavation that will be performed in phases, that will require multiple inspections, or that will require the review of any engineer or other paid consultant (such as, but not exclusively, to review any SWPPP, Simple Erosion and Sedimentation Control Plan, surveys, engineering or design plans, etc., if and as required), the Highway Superintendent may require the establishment of a Fee, inspection, and review escrow account ("FIREA") to be funded periodically by the Contractor in amounts deemed reasonable by the Highway Superintendent to ensure that adequate funds are available to pay for the costs of such Fees, inspections, and reviews. The Town Board of the Town of Ithaca may establish, by Resolution, standardized FIREA schedules for permits and other required reviews, inspections, and reports created, performed,

reviewed, or filed under, in accord with, or in furtherance of this article, which schedule shall (i) be limited to such amounts as are reasonably estimated as the administrative and other costs and expenses incurred by the Town of Ithaca in connection with any matter arising under this article, and (ii) be reviewed at least once every year by the Town Board of the Town of Ithaca to assure that the fees remain reasonable in light of actual and generally incurred costs and expenses associated with Fee, inspection, and review requirements.

§ 230-8. PERMIT ISSUANCE.

The Highway Superintendent, upon the receipt, review and approval of any application, shall issue a Permit for such work upon such terms as determined in the reasonable discretion of such Highway Superintendent. The Highway Superintendent may require that special conditions be met as deemed necessary, in his or her discretion, in conjunction with the work, Excavation and/or Construction to be performed on, in, or under any Highway or Appurtenant Structure. The Highway Superintendent may issue a revised or amended Permit at any time to correct any error or omission, to require or reference a change in the scope of work or the project specifications, to address the encountering of unforeseen surface or subsurface conditions, including weather, or for any other reason.

§ 230-9. ENFORCEMENT OFFICER.

The Highway Superintendent is hereby authorized, directed, and designated to enforce the provisions of this article.

§ 230-10. PERFORMANCE.

The Contractor may only perform work, Construction or Excavation as authorized by the express terms of the Permit. In performing such work, Construction or Excavation, the Contractor shall:

- A. Preserve and protect all roadway surfaces, the Highway, and each Appurtenant Structure from needless destruction or alteration.
- B. Commence the work, Excavation, and/or Construction, within 20 days of the date the Permit is issued, and there after perform the work, Excavation, and/or Construction, and all backfilling, tamping, repair, and restoration work, as one continuous operation to complete the same by the earliest practical date. In no event shall the work, Construction, and/or Excavation be completed after the completion date stated in or required by any Permit.

C. Restore and repair any affected Highway and Appurtenant Structure to then current requirements.

D. Maintain at all times safe crossings, barricades, coverings, warning signs, lighting, and any and all other safety devices, structures, or procedures as may be required by law or regulation, the New York State Department of Transportation, OSHA, or in the exercise of diligent care.

E. Maintain at all times the Security and insurance coverage(s) required, and to pay, whenever requested, any FIREA deposits.

F. Perform the work, Construction and/or Excavation in such a manner and at such times as to not interfere with, or to minimize, any obstructions to the safe flow of traffic.

G. Prevent stormwater pollution arising from any site or other Excavation or Construction, including through the proper installation and maintenance of short-term and permanent stormwater management practices and, as and if applicable, compliance with any SWPPP, Simple Erosion and Sedimentation Control Plan, and/or any SPDES Permit conditions or requirements.

H. Perform all backfilling and tamping with materials specified by the Highway Superintendent, which materials shall be free from clay, loam or silt, and which materials shall be moistened and mechanically tamped until thoroughly compacted.

I. For all Construction or Excavation work that will impair the provision of any public utility, water supplies, or effect any closure or partial closure of any Highway, it shall be the duty of every Contractor to give at least 72 hours' advance written notice of the work and the effect thereof to all persons, entities, or municipalities owning property or any Appurtenant Structures within 500' of the vicinity of the proposed work. Proof of due notice shall be filed with the Highway Superintendent at least 48 hours prior to the commencement of the proposed work.

J. The Contractor shall provide prior notice to each and all utility companies, public service companies, and municipalities of the proposed work, Excavation, or Construction, and to have such company or municipality mark or otherwise identify the location or course of any underground or other utilities. No work, Excavation, or Construction shall commence until all utilities and underground appurtenances are so marked and the rules and regulations of the New York State Public Service Commission and the "Dig Safely New York" program have been fully complied with.

K. All Appurtenant Structures shall be built, repaired and installed in accordance with all applicable laws, regulations, and rules, including, but not limited to the New York State Manual of Uniform Traffic Control Devices.

L. The Contractor shall preserve, protect, and maintain (including maintenance of the distribution of) all utilities encountered or affected by or during performance of any work, Excavation or Construction.

§ 230-11. REVOCATION OF PERMIT; DEFAULTS.

A. A Permit may be revoked by the Highway Superintendent after notice to the Contractor (or other permittee) for any violation of any condition of the Permit, for the violation or of any provision of, or non-compliance with, this article, for the violation of any provision of any other applicable ordinance or law relating to the work, or for the existence of any condition or the doing of any act constituting or creating a nuisance or endangering the lives or properties of others. The following terms and conditions shall apply to the revocation of any Permit and/or the occurrence of any Default:

(1) A Contractor may be granted one period of three days from the date of the notice to correct the violation and to proceed with the diligent prosecution of the work authorized by the Permit before said Permit is revoked. Written notice of any such violation or condition shall be served upon the Contractor or his agent engaged in the work. The notice shall contain a brief statement of the grounds relied upon for revoking the Permit.

(2) Notice may be given either by personal delivery thereof or by registered United States mail addressed to the person notified.

(3) When a Permit has been revoked and the work authorized by the Permit has not been completed, the Highway Superintendent shall cause such work as may be necessary to be performed to restore the Highway to as good a condition as before the Construction or Excavation work was undertaken. Such performance and work may be undertaken by the Highway Superintendent's employees and staff, or by any independent contractor hired by the Town of Ithaca to perform such work. All expenses and costs incurred to restore the Highway shall be recovered from any posted Security, or if the same is inadequate to cover the costs and expenses thereof, then from the Contractor.

(4) The failure of any Contractor to cure any Default or cure any conditions stated within the above-referenced notice within such three

days shall be a Default that shall entitle the Town of Ithaca to collect and utilize any Security or FIREA deposit for any purpose related to the Contractor's Permit, including, but not limited to, the repair of any damage, the completion of the project, or the hiring of any third party to complete the project. No default, nor the completion of the project by any third party or the Town of Ithaca, shall relieve the Contractor of any obligation or expense imposed under this article, or as may otherwise be imposed by any other law or regulation.

B. Notwithstanding the foregoing terms, conditions and requirements, whenever the Highway Superintendent believes that there is any emergency, the Highway Superintendent may issue a "stop work" order. Immediately upon receipt of the same each Contractor shall cease work, secure the worksite, and immediately adhere to and complete all safety inspections and procedures as may be required by law, regulation, or the terms of the stop work order. Work may only re-commence upon the written revocation of the stop work order by the Highway Superintendent.

§ 230-12. RENT OR HIGHWAY USE AND OCCUPANCY FEE; PERMANENT USE OR OCCUPATION OF ROADWAY.

Utility and other facilities commonly occupy areas of Highway rights-of-way, whether allowed by law or pursuant to permission granted by the State of New York or one of its agencies or municipalities. Certain uses of the Highway are and remain subordinate and subject to the regulation of the Town of Ithaca and the use of Highway rights-of-way by the public. As to Highways regulated by this article:

A. Public, private, municipal and State utility facilities will be permitted to use and occupy the municipality's highways in accordance with any franchised right or privilege granted by statute, such as, but not exclusively, those contained in the New York State Public Service Law and/or Transportation Corporations Law.

B. The Town of Ithaca reserves and preserves the right to assess, impose and collect rent or a highway use and occupancy fee from any Contractor, landowner, service provider, or system owner or operator occupying and using the property or Highways of the Town of Ithaca for private or commercial purposes for any period of time exceeding 6 months. Such rent or fee, if assessed, shall be calculated by the Highway Superintendent based upon any rational and neutral standard, including, but not limited to: (i) the recommendation of the Town Board of the Town of Ithaca; (ii) the recommendation of the Tompkins County Assessment Office; (iii) the amount of rent or fees charged for similar uses by the State of New York, the New York State Department of

Transportation, or any other or municipality similarly situate to the Town of Ithaca; (iv) the fair market value for the use or of the property utilized; or (v) the recommendation of an appraiser or other qualified consultant utilized by the Highway Superintendent or the Town Board of the Town of Ithaca.

C. The Town of Ithaca may require such Contractor, landowner, service provider or system owner or operator to enter into an easement and right-of-way agreement ("ERA") or a consent and lease agreement ("CLA") to utilize such public property and permit the objects or facilities to remain upon municipal land for private or commercial purposes. The municipality and the Contractor, landowner, service provider or system owner or operator will discuss and attempt to mutually agree upon the terms and conditions of such ERA or CLA.

D. To the extent possible the municipality shall impose rent or a highway use and occupancy fee upon a non-discriminatory and competitively neutral basis.

E. Notwithstanding anything to the contrary in this Section, the Town of Ithaca may, but is not required to, negotiate with any Contractor, landowner, service provider or system owner or operator for the in-kind provision of services or other valuable consideration in lieu of all or a portion of the amount that would otherwise be required to be paid. This option of the municipality shall, to the extent practical, be applied in a non-discriminatory and competitively neutral manner with respect to the value received by the municipality.

F. All payments of rent or highway use and occupancy fees shall be paid and collected upon a quarterly or calendar year basis, unless otherwise expressly set forth in such ERA or CLA.

G. As to all existing utility and other facilities now within the Highway, no rent or highway use and occupancy fees shall be required to paid and collected unless and until the owner of such facilities seeks to construct, reconstruct, replace, upgrade, or repair such existing facilities or otherwise applies for a Permit under or as required by this article. Absent any need for a Permit, such facilities may be allowed to remain within the Highway free of rent or highway use and occupancy fees. Notwithstanding the foregoing clauses, the Town of Ithaca may require the user or owner of any existing facilities to submit a permit application: (i) whenever the Highway Superintendent reasonably believes that such facilities need to be constructed, reconstructed, replaced, upgraded, or repaired so as to avoid interference with the use of the Highway by the Town of Ithaca any other municipality, or the State of New York, or to protect the safe and unobstructed use of the Highway right-of-way by the public; (ii) in conjunction with a highway construction or maintenance project that may require the

relocation of any facilities, particularly where the work to be undertaken in relocating such facilities may interfere with the free and safe flow of traffic or where the facilities which are located within a clear zone or deflection zone (as such terms are defined by NYSDOT); or (iii) upon the 10th anniversary of the adoption of this article.

H. It may not be feasible in all circumstances to strictly comply with the requirements of this § 230-12, and therefore, the Town of Ithaca may permit a waiver of, or a deviation from, the standards and requirements of this § 230-12 (including the waiver or partial waiver of any rent or fee) upon making a written determination: (i) that such waiver or deviation will not adversely affect the traveling public; (ii) that such waiver or deviation will not adversely affect the maintenance or safe operation of the Highway; and (iii) that such variance or deviation is not in conflict with any other applicable law or regulation.

§ 230-13. INSPECTIONS.

Until the Construction or Excavation is completed, the Town of Ithaca may furnish and charge for an inspection for each day that such work is in progress. Inspections shall be made for the sole purpose of verifying compliance with the Permit or for verification that the materials and processes used will result in a finished job that is consistent with Town of Ithaca specifications. No inspection is made for the purposes of reviewing, recommending, or verifying safety practices. Safety compliance and safety inspections are and shall be and remain the sole responsibility of the Contractor. The Fee for each such inspection shall be as set from time to time by Town Board resolution and shall be promptly paid upon request.

§ 230-14. RESTORATION.

After performance and/or completion of any work, Construction or Excavation, the Highway and each Appurtenant Structure shall be repaired and restored in a permanent manner satisfactory to the Highway Superintendent and/or in accord with Permit requirements. To the extent possible, any repair or restoration must match the original Highway or Appurtenant Structure in type, color, structure, materials, grade, and texture, in compliance with then current applicable specifications there for. Upon completion of the work and after restoration pursuant to the terms of this article, any remaining amount of any deposit or Security shall be returned or released, as applicable.

§ 230-15. WAIVERS.

Where the Highway Superintendent finds that, due to the special circumstances of a particular case a waiver of certain requirements is justified, a waiver of any one or more

requirements of this article may be granted. In all cases, no waiver shall be granted unless the Highway Superintendent finds and records in writing that:

- A. Granting the waiver would be keeping with the intent and spirit of this article and is in the best interests of the community.
- B. There is no adverse effect upon the Highway or any Appurtenant Structure.
- C. There is no adverse impact upon the ability to safely travel upon such Highway.
- D. There are special circumstances involved in the particular case.
- E. Denying the waiver would result in undue hardship, provided that such hardship has not been self-imposed.
- F. The waiver so requested or granted represents the minimum necessary degree of variation from the requirements of this article or the Permit.

§ 230-16. OFFENSES; PENALTIES; ENFORCEMENT.

Any Contractor or other person or entity that violates any of the provisions of this article shall be guilty of a misdemeanor punishable by a criminal fine between \$500.00 and \$2,000.00, or a sentence of imprisonment not to exceed 15 days, or both. Each week of continued violation shall be and be deemed a separate offense. For the purposes of conferring jurisdiction upon courts and judicial officers such violation shall be deemed an unclassified misdemeanor and all provisions of law relating generally to misdemeanors shall apply. In lieu of the foregoing and at the election of the Town of Ithaca, any violation of this article shall subject any Contractor, person, or other entity or party to a civil penalty of not less than \$100.00 and not more than \$500.00 for any first violation, and to a civil penalty of not less than \$250.00 and not more than \$1,000.00 for any subsequent violations, with such penalties to be recovered in a civil action in the name of the Town of Ithaca. The application of any sentence or penalty shall not preclude the enforced removal or prevention of any prohibited conditions or violations of the Permit or this article. Nothing in this article shall prohibit the Town of Ithaca from seeking any other relief as may be provided for or allowed by law or in equity, or be deemed to effect an election of remedies by the Town of Ithaca. Any fine or penalty provided for in this article is intended to be in addition to, and not in lieu of, any rights or remedies the Town of Ithaca may have in such circumstances.

§ 230-17. APPEALS.

Any aggrieved person or entity may appeal any action or determination of the Highway Superintendent (or any designee) to the Town of Ithaca Town Board by filing a written statement setting forth the reasons for such appeal. Such statement shall be filed within 5 days of the delivery or filing of any action or determination from which the appeal is taken, time being of the essence. Upon receipt of such appeal, the Town Board shall hold a hearing within 30 days and, after a review of all evidence, shall affirm, modify, or annul the appealed from action or determination.

§ 230-18. ARTICLE 78.

The actions and determinations of the Town of Ithaca, and its elected officials, employees, and agents shall each be deemed "final determinations" for purposes of Article 78 of the New York Civil Practice Laws and Rules ("CPLR"). Notwithstanding this, standing under said Article 78 of the CPLR shall only be appropriate after the exhaustion of any administrative appeals as provided for in this article.

§ 230-19. LIABILITY AND INDEMNITY.

The Contractor assumes sole responsibility for the worksite and all related or adjacent areas and lands and agrees to assume all responsibility for any injury or damage that may or does occur as a result of any Excavation or Construction and any related work, including, but not limited to, traffic control, grubbing, paving, clean up, remediation, or restoration work. The Contractor, to the fullest extent permitted by law, shall indemnify and hold the Town of Ithaca harmless from and against any, each, and all losses, actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law, admiralty or equity (all together hereafter, "Claims"), including, but not limited to, reimbursement to the Town of Ithaca any amount expended for any and all experts', consultants', attorneys' and engineering fees and expenses arising from or in relation to any Claim. The Town of Ithaca shall not be liable or responsible for any injury to persons or damage to property due to any acts or failures to act under or pursuant to any Permit or this article unless it is proven to a reasonable degree of certainty that such injury or damage was solely caused by a willful or intentional act of the Town of Ithaca.

§ 230-20. CONSTRUCTION WITH OTHER LAWS.

The provisions of this article shall not diminish or impair the right of any other governmental agency or body to require that any act be taken or avoided. No variance,

permit, grandfather rights, law, code, resolution, procedure, or rule pertaining to zoning or land use shall supersede the requirements of this article. This article is intended to supplement and augment the requirements of zoning and land use regulations and rules, as well as the rules of other governmental bodies and agencies, relating to the preservation and protection of highways and public rights-of-way, and to ensure their continued safe operating condition.”

SECTION 2: **SEVERABILITY; INTERPRETATION** - If the provisions of any article, section, subsection, paragraph, subdivision, or clause of this Local Law shall be adjudged invalid by a court or other tribunal of competent jurisdiction, such order or judgment shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision or clause of this Local Law. Any such invalidity shall be confined in its operation to the clause, sentence, paragraph, section or article thereof directly involved in the controversy in which such order or judgment shall have been rendered. Section and other headings are for reference and convenience only and shall not be deemed or construed to limit or define the requirements of clauses set forth there under.

SECTION 3: **EFFECTIVE DATE** - This Local Law shall be and become effective immediately upon filing with the New York Secretary of State.